

## ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (the "Agreement") is entered into as of this 24th day of July, 2015 (the "Effective Date") by and between CAPITAL BROADCASTING, INC., a New York corporation ("Buyer"), and FAMILY STATIONS, INC., a \_\_\_\_\_ corporation ("Seller") (each a "Party" and, collectively, the "Parties").

### RECITALS

WHEREAS, Seller is the licensee and operator of FM Translator Radio Station W287AB, 105.3 MHz, Albany, New York, FCC Facility ID No. 20922 (the "Translator"), holding valid authorizations for the operation thereof from the Federal Communications Commission (the "FCC"); and

WHEREAS, on the terms and conditions described herein, Seller desires to sell and Buyer desires to purchase certain of the assets owned by Seller and used in connection with the operation of the Translator; and

WHEREAS, assignment of the FCC license for the Translator requires the prior consent of the FCC;

NOW, THEREFORE, taking the foregoing into account, and in consideration of the mutual covenants and agreements set forth herein, the sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound, hereby agree to the following terms and conditions:

### ARTICLE 1: SALE AND PURCHASE

1.1 Translator Assets. Subject to the terms and conditions herein contained, Seller shall grant, convey, sell, assign, transfer and deliver to Buyer on the Closing Date (as defined below) only the following assets, properties, agreements, interests and rights of Seller used exclusively in connection with the Translator (collectively, the "Translator Assets");

(a) Licenses and Authorizations. All licenses, authorizations, permits and approvals issued with respect to the Translator by the FCC (the "FCC Authorizations"), as set forth on Schedule 1.1(a) attached hereto.

(b) Equipment. All equipment used and useful in the operation of the Translator, including but not limited to the Translator's antenna, transmitter, and transmission line located at the New Baltimore Tower Site, as more specifically set forth on Schedule 1.1(b) attached hereto.

(c) Books and Records. All engineering and other books, papers, files, correspondence and records pertaining to the operations of the Translator, including the engineering records and copies of all filings and correspondence with the FCC which are in the possession of Seller; provided that Seller may retain copies thereof.



(d) **Tower Site License Agreement.** That certain tower site license agreement by and between Seller and that certain licensor named Goin' Mobile LLC, dated January 1, 2015, relating to the premises at the licensor's New Baltimore Tower Site on School House Road, Town of New Baltimore, New York (the "Tower Site License"), which is the Translator's authorized transmitter site.

(e) **Good Will.** All of the good will of Seller in connection with the Translator.

**1.2 Excluded Assets.** Seller will retain any assets not specified in Section 1.1 hereof.

**1.3 Liabilities.** The Translator Assets shall be transferred by Seller to Buyer free and clear of all debts, security interests, mortgages, trusts, claims, pledges, conditional sales agreements, equipment leases, and other liens, liabilities and encumbrances of every kind and nature ("Liens"). Buyer shall not assume and undertake any obligations or liability of Seller in connection with the Translator Assets except with respect to the Tower Site License.

**1.4 Purchase Price.** The purchase price to be paid for the Translator Assets will be as follows:

(a) **Deposit.** Simultaneously with the execution of this Agreement, Buyer is delivering to Seller TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00) as a deposit (the "Deposit") to secure Buyer's performance hereunder. In the event a Final Order of a grant to assign the Translator license to Buyer is not obtained within 270 days of the date of this Agreement or in the event this Agreement is terminated pursuant to Article 11, Seller shall return to Buyer the full amount of the Deposit, unless Buyer is found by a court of competent jurisdiction to be in material default of this Agreement.

(b) **Initial Purchase Price.** At the Closing, Buyer shall pay to Seller FIFTY THOUSAND DOLLARS (\$50,000.00) (the "Initial Purchase Price") less the amount of the Deposit in immediately available U.S. funds. In the event the Contingent Additional Purchase Price (defined below) is not triggered, the Initial Purchase Price shall constitute the complete and full purchase price.

(c) **Contingent Additional Purchase Price.** In the event either the Seller, pursuant to Section 5.5 below, or the Buyer, within three years after the Closing, obtains a grant from the FCC (and such grant has become a Final Order as that term is defined elsewhere in this Agreement) of a construction permit to modify the Translator's operating parameters such that the Translator, as modified, is predicted to serve a significant increase of the population in the new 60 dBu contour ("Increased Service CP") as compared to the population in the existing 60 dBu contour (25,000 persons), Buyer shall pay to Seller \$1.73 per 10 persons of population gained (gained population to be rounded to the nearest 10 persons) in the Increased Service CP 60 dBu contour up to a maximum of SEVENTY-FIVE THOUSAND DOLLARS (\$75,000) (the "Contingent Additional Purchase Price"), in immediately available U.S. funds, within ten (10) business days of the date on which the FCC's grant of the Increased Service CP becomes a Final Order. For clarity, the Contingent Additional Purchase Price is in addition to, and not in lieu of, the Initial Purchase Price. In the events Buyer assigns or transfers the Translator's FCC license



to a third party prior to the expiration of three years after the Closing and Buyer has not already paid the Contingent Additional Purchase Price to Seller (if triggered), Buyer shall cause the assignee or transferee to agree to and to assume the Contingent Additional Purchase Price obligations as set forth in this Section 1.4(b) and, in such event, Buyer shall have no further obligation to Seller hereunder.

(d) **Allocation of Purchase Price.** The Purchase Price (Initial Purchase Price and Contingent Additional Purchase Price, if triggered) shall be allocated among the Assets as follows:

<u>Asset</u>	<u>Percent of Value</u>
Translator Equipment and Other Tangible Assets	60
Translator FCC Authorizations	25
Goodwill	15

This allocation shall be used by all parties in allocating the value of the Translator Assets to the Initial Purchase Price and Contingent Additional Purchase Price (if triggered) for federal tax purposes in accordance with the provisions of Section 1060 of the Internal Revenue Code of 1986, as amended, and any regulations promulgated thereunder. Buyer and Seller shall each complete, execute and timely file Form 8594 or any applicable successor form with the Internal Revenue Service in connection with their tax returns for the taxable year that includes Closing, and agree to act in accordance with the allocation of the Purchase Price established pursuant to this Section in the preparation and filing of all tax returns. In the event that any taxing authority disputes or challenges this allocation of the Purchase Price, the party receiving notice of this dispute or challenge shall promptly notify the other party hereto of such dispute or challenge and, in responding to such dispute or challenge, shall not take any position in contradiction of the allocation of the Purchase Price without prior written consent of the other party hereto.

(e) **Closing Date Adjustments.** The operation of the Translator and the income and normal operating expenses, including without limitation assumed liabilities and prepaid expenses, attributable thereto to the Closing Date shall be for the account of Seller and thereafter for the account of Buyer. Expenses for goods or services received both before and after the Closing Date, power and utilities charges, prepaid cash time sales agreements, and rents, annual license fees, wages, payroll taxes, vacation pay and other fringe benefits for employees who enter the employment of Buyer (Buyer undertaking no obligation to employ any such person) and similar prepaid and deferred items shall be prorated between Seller and Buyer as of the Closing Date (the "Closing Date Adjustments"). All special assessments, regulatory fees and similar charges or taxes imposed against the Translator Assets in respect of any period of time through the Closing Date, whether payable in installments or otherwise, shall be the responsibility of Seller, and amounts payable with respect to such special assessments, charges or taxes in respect of any period of time after the Closing Date shall be the responsibility of Buyer, and such charges shall be adjusted as required hereunder. At the Closing, Seller shall, pursuant to this Section 1.4, determine any adjustments and deliver a statement of them to Buyer



(which statement shall set forth in reasonable detail the basis for those adjustments). At the Closing, Buyer shall pay to Seller, or Seller shall pay to Buyer, as the case may be, the net amount due as a result of the adjustments (excluding any item that is in dispute). If Buyer disputes Seller's determinations, or if at anytime after delivery of Seller's statement of determinations, either party determines that any item included in the apportionments is inaccurate, or that an additional item should be included in the apportionments, the parties shall confer with regard to the matter and an appropriate adjustment and payment shall be made as agreed upon by the parties (or, if they are unable to resolve the matter, they shall select a firm of independent certified public accountants to resolve the matter, whose decision on the matter shall be binding and whose fees and expenses shall be borne equally by the parties).

## ARTICLE 2: FCC CONSENT; CLOSING

**2.1 FCC Consent; Assignment Application.** As soon as practicable (but in no event later than ten (10) business days after the Effective Date), Buyer and Seller shall file an application with the FCC (the "Assignment Application") requesting the FCC's consent (the "FCC Consent") to the assignment from Seller to Buyer of all FCC Authorizations pertaining to the Translator. Buyer and Seller shall take all reasonable steps to cooperate with each other and with the FCC in order to secure such FCC Consent without delay and to promptly consummate the transaction contemplated in this Agreement. All governmental filing fees and charges applicable to the request for FCC Consent shall be shared equally by Buyer and Seller. Each party shall be responsible for all of its other costs with respect to the preparation, filing and prosecution of the Assignment Application.

**2.2 Closing Date; Closing Place.** The closing (the "Closing") of the transaction contemplated in this Agreement shall occur within fifteen (15) business days after grant of the FCC Consent becomes a Final Order (as defined below) (the "Closing Date"); provided that in any case, the Closing shall not occur unless the other conditions to the Closing set forth in Articles 7 and 8 hereof shall have either been waived or satisfied; and Seller and Buyer agree to cooperate to the extent necessary to obtain the FCC's extension of the effectiveness of the FCC Consent as may be required. For purposes of this Agreement, the term "Final Order" means action by the FCC granting an FCC application, and such grant shall not have been reversed, stayed, enjoined, set aside, annulled, or suspended, and with respect to which no appeal, no petition for re-hearing, reconsideration, or stay, and no other administrative or judicial action contesting such consent or approval, is pending and as to which the time for filing any such appeal, petition or other action has expired or, if filed, has been denied, dismissed, or withdrawn and the time for instituting any further legal proceeding, whether by a third party or sua sponte by the FCC, has expired under the Communications Act and FCC rules. The Closing shall be held by exchange of documents via facsimile or email, or as Seller and Buyer may otherwise agree.

## ARTICLE 3: REPRESENTATIONS AND WARRANTIES OF SELLER

Seller makes the following representations and warranties to Buyer:

**3.1 Organization.** Seller is duly organized, validly existing and in good standing under the laws of the state of its incorporation. Seller has the requisite power and authority to



execute, deliver and perform this Agreement and the other agreements and instruments to be made by Seller pursuant hereto (collectively, the "Seller Ancillary Agreements") and to consummate the transactions contemplated hereby.

**3.2 Authorization.** The execution, delivery and performance of this Agreement and the Seller Ancillary Agreements by Seller have been duly authorized and approved by all necessary action of Seller and do not require any further authorization or consent of Seller. This Agreement is, and each Seller Ancillary Agreement when made by Seller and the other parties thereto will be, a legal, valid and binding agreement of Seller enforceable in accordance with its terms, except in each case as such enforceability may be limited by bankruptcy, moratorium, insolvency, reorganization or other similar laws affecting or limiting the enforcement of creditors' rights generally and except as such enforceability is subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

**3.3 No Conflicts.** The execution and delivery by Seller of this Agreement and the Seller Ancillary Agreements and the consummation by Seller of the transactions contemplated hereby does not conflict with any organizational documents of Seller or any law, judgment, order, or decree to which Seller is subject or require the approval, consent, authorization or act of, or the making by Seller of any declaration, filing or registration with, any third party or any governmental authority, except the FCC Consent and the written consent of Goin' Mobile LLC (or any successor in interest) for the assignment of the Tower Site License.

**3.4 FCC Authorizations and Other Licenses.** Schedule 1.1(a) hereto contains a true and complete list of the FCC Authorizations and all other licenses, permits, or other authorizations from governmental or regulatory authorities that are required for the construction and operation of the Translator. The FCC Authorizations are in full force and effect, unimpaired by any act or omission of Seller. Seller lawfully holds each of the FCC Authorizations and the other licenses, permits, and authorizations listed on Schedule 1.1(a). Seller has operated the Translator in material compliance with the FCC Authorizations, the Communications Act of 1934, as amended, and all regulations and published policies of the FCC. All material filings required to be filed with the FCC by Seller with respect to the operation of the Translator have been timely filed, and all such filings are accurate and complete in all material respects.

**3.5 Title Documents.** The instruments to be executed by Seller and delivered to Buyer at the Closing, conveying the Translator Assets to Buyer, will transfer good and marketable title to the Translator Assets, free and clear of all Liens.

**3.6 Litigation; Compliance with Law.** Except as otherwise set forth herein, Seller is not subject to any order, writ, injunction, judgment, arbitration, decision, or decree having a binding effect and affecting the Translator Assets or which restrains or enjoins, or purports to restrain or enjoin, or could reasonably be expected to restrain or enjoin, the transaction contemplated hereby, and to Seller's knowledge no such proceeding is pending. There is no material litigation pending by or against, or, to Seller's knowledge, threatened against, Seller which relates to the Translator. Seller, with respect to the Translator, has complied in all material respects with all applicable laws, regulations, orders, or decrees. The present uses by Seller of the Translator Assets do not violate any such laws, regulations, orders, or decrees in any



material respect, and Seller has no knowledge of any basis for any claim for compensation or damage or other relief from any violation of the foregoing.

**3.7 No Finder.** No broker, finder or other person is entitled to a commission, brokerage fee or other similar payment in connection with this Agreement or the transactions contemplated hereby as a result of any agreement or action of Seller or any party acting on Seller's behalf.

#### **ARTICLE 4: REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer represents and warrants to Seller:

**4.1 Organization.** Buyer is duly organized, validly existing and in good standing under the laws of the state of its incorporation. Buyer has the requisite power and authority to execute, deliver and perform this Agreement and the other agreements and instruments to be executed and delivered by Buyer pursuant hereto (collectively, the "Buyer Ancillary Agreements") and to consummate the transactions contemplated hereby.

**4.2 Authorization.** The execution, delivery and performance of this Agreement and the Buyer Ancillary Agreements by Buyer have been duly authorized and approved by all necessary action of Buyer and do not require any further authorization or consent of Buyer. This Agreement is, and each Buyer Ancillary Agreement when made by Buyer and the other parties thereto will be, a legal, valid and binding agreement of Buyer enforceable in accordance with its terms, except in each case as such enforceability may be limited by bankruptcy, moratorium, insolvency, reorganization or other similar laws affecting or limiting the enforcement of creditors' rights generally and except as such enforceability is subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

**4.3 No Conflicts.** The execution and delivery by Buyer of this Agreement and the Buyer Ancillary Agreements and the consummation by Buyer of the transactions contemplated hereby does not conflict with any organizational documents of Buyer or any law, judgment, order or decree to which Buyer is subject, or require the approval, consent, authorization or act of, or the making by Buyer of any declaration, filing or registration with, any third party or any governmental authority, except the FCC Consent.

**4.4 Buyer's Qualification.** Buyer is legally, financially, and technically qualified to acquire, and to become the FCC licensee of, the Translator and to perform its obligations under this Agreement.

**4.5 Litigation.** Buyer is not subject to any order, writ, injunction, judgment, arbitration, decision, or decree having a binding effect and affecting the business of Buyer or which restrains or enjoins, or purports to restrain or enjoin, or could reasonably be expected to restrain or enjoin, the transaction contemplated hereby, and no such proceeding is pending. There is no material litigation pending by or against, or, to the knowledge of Buyer, or threatened against Buyer, that would prevent or materially impede the consummation by Buyer of the transaction contemplated by this Agreement.



**4.6 Acknowledgment of Troy LPFM.** Buyer acknowledges that it is aware of the FCC's grant of a low power FM construction permit in FCC File No. BNPL-20131114ABX authorizing the construction of WOOC-LP, Troy, New York (Facility ID No. 194800) (the "Troy LPFM") to operate on 105.3 MHz and that the Troy LPFM may affect the ability of Buyer to modify the Translator's authorization to rebroadcast WGDJ(AM).

**4.7 Broker.** No broker, finder or other person is entitled to a commission, brokerage fee or other similar payment in connection with this Agreement or the transactions contemplated hereby as a result of any agreement or action of Buyer or any party acting on Buyer's behalf.

## **ARTICLE 5: COVENANTS OF SELLER**

The following terms of this Article 5 shall apply from the Effective Date until the completion of the Closing (except as otherwise specified).

**5.1 FCC Compliance.** Seller shall continue to operate and maintain the Translator in accordance in all material respects with the terms of the FCC Authorizations and in material compliance with all applicable laws and FCC regulations and published policies. Seller will not file any application to the FCC requesting authority to modify the Translator's facilities without Buyer's prior written consent and Seller shall take all actions necessary to keep the FCC Authorizations, including all material permits and applications pending before the FCC, valid and in full force and effect.

**5.2 Disposition of Assets.** Prior to the Closing Date, Seller shall not, without the prior written consent of Buyer, sell, lease, or transfer, or agree to sell, lease, or transfer, any of the Translator Assets nor create any new Lien on the Translator Assets.

**5.3 Compliance with Law.** Seller shall comply in all material respects with all federal, state, and local laws, rules and regulations in connection with the operation of the Translator.

**5.4 Access to Facilities, Files and Records.** At the request of Buyer, Seller shall from time to time give or cause to be given to Buyer full access during normal business hours to the Translator Assets.

**5.5 Permit Application.** At the request of Buyer, Seller shall apply for such minor modifications and amendments thereto of the Translator's facilities as Buyer may request, including a change in the Translator's transmitter site to a location that would allow the Translator to rebroadcast the signal of Buyer's AM Station WGDJ(AM), Rensselaer, New York (the "Permit Application"). In the event Buyer wishes Seller to file the Permit Application while Seller still owns the Translator, Buyer shall provide all technical data for, and pay all expenses relating to, the preparation, filing, and prosecution of the Permit Application and any amendments thereto.

**5.6 Consummation of Agreement.** Seller shall use all commercially reasonable efforts to fulfill and perform all conditions and obligations on its part to be fulfilled and performed under this Agreement, and to cause the transactions contemplated by this Agreement to be fully carried out.



## ARTICLE 6: COVENANTS OF BUYER

Buyer covenants and agrees that from the date hereof until the completion of the Closing:

**6.1 Representations and Warranties.** Buyer shall give detailed written notice to Seller promptly upon learning of the occurrence of any event that would cause or constitute a breach or would have caused a breach had such event occurred or been known to Buyer prior to the date hereof, of any of the representations and warranties of Buyer contained in this Agreement. Buyer shall use commercially reasonable efforts to cure any such event.

**6.2 Consummation of Agreement.** Buyer shall use all commercially reasonable efforts to fulfill and perform all conditions and obligations on its part to be fulfilled and performed under this Agreement, and to cause the transaction contemplated by this Agreement to be fully carried out.

## ARTICLE 7: CONDITIONS TO THE OBLIGATIONS OF SELLER

The obligations of Seller under this Agreement are subject to the fulfillment of the following conditions prior to or on the Closing Date. Upon the Closing, each such condition shall be deemed to have been satisfied.

### **7.1 Representations, Warranties and Covenants.**

(a) Each of the representations and warranties of Buyer contained in this Agreement was true and correct as of the date when made and is deemed to be made again on and as of the Closing Date and is then true and correct, except to the extent changes are permitted or contemplated pursuant to this Agreement.

(b) Buyer shall have performed and complied with each and every covenant and agreement required by this Agreement to be performed or complied with by it prior to or on the Closing Date.

**7.2 Proceedings.** Neither Seller nor Buyer is subject to any restraining order or injunction (or similar action) restraining or prohibiting the consummation of the transaction contemplated hereby.

**7.3 FCC Authorizations.** The FCC Consent has been issued by the FCC.

**7.4 Deliveries.** Buyer has complied with each and every one of its obligations set forth in Section 9.2.

## ARTICLE 8: CONDITIONS TO THE OBLIGATIONS OF BUYER

The obligations of Buyer under this Agreement are subject to the fulfillment of the following conditions prior to or on the Closing Date. Upon the Closing, each such condition shall be deemed to have been satisfied.

### **8.1 Representations, Warranties and Covenants.**



(a) Each of the representations and warranties of Seller contained in this Agreement was true and correct as of the date when made and is deemed to be made again on and as of the Closing Date and is then true and correct, except to the extent changes are permitted or contemplated pursuant to this Agreement.

(b) Seller shall have performed and complied with each and every covenant and agreement required by this Agreement to be performed or complied with by it prior to or on the Closing Date.

**8.2 Proceedings.** Neither Seller nor Buyer is subject to any restraining order or injunction (or similar action) restraining or prohibiting the consummation of the transaction contemplated hereby.

**8.3 FCC Authorizations.** The FCC Consent will have been issued and shall have become a Final Order.

**8.4 Deliveries.** Seller has complied with each and every one of the obligations set forth in Section 9.1.

**8.5 Liens.** No Liens are or have been filed or recorded against the Translator Assets in the public records of any jurisdiction in which the Translator Assets are located.

#### **ARTICLE 9: ITEMS TO BE DELIVERED AT CLOSING**

**9.1 Deliveries by Seller.** At Closing, Seller shall deliver to Buyer, duly executed by Seller, a bill of sale and assignment sufficient to sell, convey, transfer and assign the Translator Assets (including the FCC Authorizations) to Buyer free and clear of any Liens, in a form reasonably acceptable to Buyer and Seller. Seller shall also deliver to Buyer, duly executed by the licensor of the New Baltimore Tower Site, the written consent of the licensor of the New Baltimore Tower Site for Seller to assign to Buyer the Tower Site License.

**9.2 Deliveries by Buyer.** At the Closing, Buyer shall pay the Initial Purchase Price in accordance with Section 1.4.

#### **ARTICLE 10: SURVIVAL AND INDEMNITY**

The rights and obligations of Buyer and Seller under this Agreement shall be subject to the following terms and conditions:

**10.1 Survival of Representations and Warranties.** The representations and warranties of Buyer and Seller contained in this Agreement shall survive the Closing for one (1) year from the Closing Date. Neither Seller nor Buyer shall have any liability whatsoever with respect to any representation or warranty unless a claim is made hereunder or an action at law or in equity is commenced prior to expiration of the 1-year survival period for such representation or warranty, with the exception of the terms and conditions outlined in Paragraph 1.4(c) of this Agreement.



## **10.2 General Agreement to Indemnify.**

(a) Seller on the one hand, and Buyer on the other hand, shall indemnify, defend and hold harmless each other and any employee, representative, agent, director, officer, affiliate or permitted assign of each other (each, an "Indemnified Party") from and against any and all claims, actions, suits, proceedings, liabilities, obligations, losses and damages, amounts paid in settlement, diminution of value, interest, costs and expenses (including reasonable attorneys' fees, court costs and other out-of-pocket expenses incurred in investigating, preparing or defending the foregoing) (collectively, "Losses") asserted against, incurred or suffered by any Indemnified Party as a result of, arising out of or relating to: (i) the failure of any representation or warranty of the Indemnifying Party made in the Agreement to have been true and correct when made or as of the Closing Date as though such representation or warranty were made at and as of the Closing Date; or (ii) the breach by the Indemnifying Party of any covenant or agreement of such party contained in this Agreement or any collateral agreement to the extent not waived by the other party hereto.

(b) Seller further agrees to indemnify and hold harmless Buyer and any other Indemnified Party of Buyer from and against any Losses asserted against, incurred or suffered by Buyer or any other Indemnified Party of Buyer arising out of, resulting from, or relating to the operation of the Translator and ownership of the Translator Assets prior to the Closing.

(c) Buyer further agrees to indemnify and hold harmless Seller and any other Indemnified Party of Seller from and against any Losses asserted against, incurred or suffered by Seller or any other Indemnified Party of Seller arising out of, resulting from, or relating to the operations of the Translator and the Translator Assets after the Closing.

## **10.3 General Procedures for Indemnification.**

(a) The Indemnified Party seeking indemnification under this Agreement shall promptly notify in writing the party or parties against whom indemnification is sought (the "Indemnifying Party") of the assertion and basis of any claim, or the commencement and basis of any action, suit or proceeding by any third party in respect of which indemnity may be sought hereunder (a "Third Party Claim") and will give the Indemnifying Party such information with respect thereto as the Indemnifying Party may reasonably request, but failure to give such notice shall not relieve the Indemnifying Party of any liability hereunder (unless the Indemnifying Party has suffered material prejudice by such failure). The Indemnifying Party shall have the right, but not the obligation, exercisable by written notice to the Indemnified Party within thirty (30) days of receipt of notice from the Indemnified Party of the commencement of a Third Party Claim, to assume the defense and control the settlement of such Third Party Claim that involves (and continues to involve) solely money damages. Failure by the Indemnifying Party to so notify the Indemnified Party shall be deemed a waiver by the Indemnifying Party of its right to assume the defense of such claim.

(b) Whether or not the Indemnifying Party chooses to defend or prosecute any Third Party Claim, the parties hereto shall cooperate in the defense or prosecution thereof and shall furnish such records, information and testimony, and attend such conferences, discovery



proceedings, hearings, trials and appeals, as may be reasonably requested in connection therewith.

(c) The Indemnifying Party or the Indemnified Party, as the case may be, shall have the right to participate in (but not control), at its own expense, the defense of any Third Party Claim that the other is defending, as provided in this Agreement.

(d) The Indemnifying Party, if it has assumed the defense of any Third Party Claim as provided in this Agreement, shall not consent to, or enter into, any compromise or settlement of, or consent to the entry of any judgment arising from, any such Third Party Claim (which compromise, settlement, or judgment: (i) commits the Indemnified Party to take, or to forbear to take, any action; or (ii) does not provide for a complete release by such Third Party of the Indemnified Party) without the Indemnified Party's prior written consent. If the conditions set forth herein are met but the Indemnified Party refuses to settle any Third Party Claim, the Indemnifying Party may tender the settlement amount and be relieved of further liability.

(e) The Indemnifying Party shall not be entitled to require that any action be brought against any other person before action is brought against it hereunder by the Indemnified Party, but shall be subrogated to any right of action to the extent that it has paid or successfully defended against any Third Party Claim.

#### ARTICLE 11: TERMINATION

**11.1 Termination.** This Agreement may be terminated at any time prior to Closing:

(a) by the mutual written consent of Seller and Buyer;

(b) by written notice of Seller to Buyer if Buyer: (i) does not satisfy the conditions or perform the obligations to be satisfied or performed by Buyer on or before the Closing Date in any material respect; (ii) breaches in any material respect any of Buyer's representations or warranties; or (iii) defaults in any material respect in the performance of any of Buyer's covenants or agreements under this Agreement; and in any of which events such breach or default is not cured within the Cure Period (as defined below), if applicable;

(c) by written notice of Buyer to Seller if Seller: (i) does not satisfy the conditions or perform the obligations to be satisfied or performed by Seller on or before the Closing Date in any material respect; (ii) breaches in any material respect any of Seller's representations or warranties; or (iii) defaults in any material respect in the performance of any of Seller's covenants or agreements under this Agreement; and in any of which events such breach or default is not cured within the Cure Period (as defined below), if applicable;

(d) by Buyer as provided in Section 12.6 (Risk of Loss);

(e) by written notice of Seller to Buyer, or Buyer to Seller: (i) if the Closing has not been consummated on or before the date nine (9) months after the Effective Date; provided, however, that the right to terminate this Agreement under this clause shall not be available to any Party whose breach of this Agreement has been the cause of, or resulted in, the failure of the Closing to occur on or before such date; (ii) if, for any reason, the FCC denies or



dismisses the Assignment Application and the time for reconsideration or court review under the Communications Act with respect to such denial or dismissal has expired and there is not then pending with respect thereto a timely filed petition for reconsideration or request for review; or (iii) if, for any reason, the Assignment Application is designated for an evidentiary hearing.

**11.2 Cure Period.** The term "Cure Period" as used herein means a period commencing with the date that Buyer or Seller receives from the other Party written notice of breach or default hereunder and continuing until thirty (30) days thereafter; provided, however, that if the breach or default cannot reasonably be cured within such period but can be cured before the Closing Date, and if diligent efforts to cure promptly commence, then the Cure Period shall continue as long as such diligent efforts to cure continue, but not beyond the Closing Date; and provided, further, that no such cure period shall apply to the Buyer's obligation to proffer the Purchase Price on the Closing Date. Except as set forth below, the termination of this Agreement shall not relieve any Party of any liability for breach or default under this Agreement prior to the date of termination.

**11.3 Liability; Right to Terminate.** A termination of this Agreement shall not relieve any Party hereto of any liability for which it otherwise would be subject. Notwithstanding anything in this Agreement to the contrary, no Party that is in material breach of this Agreement shall be entitled to terminate this Agreement except with the written consent of the other Party.

**11.4 Specific Performance.** Seller acknowledges that the Translator is a unique asset not readily obtainable on the open market and that, in the event that Seller fails to perform its obligation to consummate the transaction contemplated hereby, money damages alone will not be adequate to compensate Buyer for its injury. Therefore, Seller agrees and acknowledges that in the event of Seller's failure to perform its obligation to consummate the transaction contemplated hereby, Buyer shall be entitled upon payment of the Purchase Price (in lieu of any other rights and remedies on account of such failure if such relief is granted), to specific performance of the terms of this Agreement and of Seller's obligation to consummate the transaction contemplated hereby. If any action is brought by Buyer to enforce this Agreement, Seller shall waive the defense that there is an adequate remedy at law.

## ARTICLE 12: MISCELLANEOUS

**12.1 Governing Law.** The construction and interpretation of this Agreement shall at all times and in all respects be governed by the laws of the State of New York (exclusive of those relating to conflicts of laws). Any action at law, suit in equity or judicial proceeding arising directly, indirectly, or otherwise in connection with, out of, related to or from this Agreement, or any provision hereof, shall be litigated only in the courts of New York in Albany County. The Parties hereby consent to the personal and subject matter jurisdiction of such courts and waive any right to transfer or change the venue of any litigation between them.

**12.2 Expenses.** Except as otherwise specifically provided herein, each Party hereto shall bear all of its expenses incurred in connection with the transaction contemplated by this Agreement, including without limitation, accounting, engineering and legal fees incurred in connection herewith.



**12.3 Entire Agreement; Amendment; No Waiver.** This Agreement, including the schedules and exhibits hereto, contains the entire agreement and understanding by and between the Parties, and no other representations, promises, agreements, or understanding, written or oral, not contained herein shall be of any force or effect. This Agreement may only be amended in a writing signed by the Parties. No oral agreement shall have any effect. No failure or delay in exercising any right hereunder shall be deemed or construed to be a waiver of such right, either prospectively or in the particular instance. This Agreement has been prepared by both of the Parties hereto, and no inference of ambiguity against the drafter of a document therefore applies against either Party hereto.

**12.4 Confidentiality.** Buyer and Seller shall keep confidential all information obtained by it with respect to the other Party in connection with this Agreement, except where such information is known through other lawful sources or where its disclosure is required in accordance with applicable law, including requirements of the FCC pursuant to the Assignment Application. If the transaction contemplated hereby is not consummated for any reason, Buyer and Seller shall return to each other, without retaining a copy thereof in any medium whatsoever, any schedules, documents or other written information, including all financial information, obtained from the other in connection with this Agreement and the transaction contemplated hereby.

**12.5 Public Announcements.**

(a) Prior to the Closing Date, no Party shall, without the approval of the other Party hereto, make any press release or other public announcement concerning the transaction contemplated by this Agreement, except (i) to announce that the transaction has been entered into, and (ii) as and to the extent that such Party shall be so obligated by law, in which case such Party shall give advance notice to the other Party and the Parties shall use their best efforts to cause a mutually agreeable release or announcement to be issued.

(b) Notwithstanding the foregoing, the Parties acknowledge that the rules and regulations of the FCC require that local public notice of the transaction contemplated by this Agreement be made after the Assignment Application has been filed with the FCC.

**12.6 Risk of Loss.** The risk of loss to any of the Translator Assets on or prior to the Closing shall be upon Seller. Seller shall use all commercially reasonable efforts to repair or replace any damaged or lost Translator Assets.

**12.7 Successors and Assigns.** Neither party may assign this Agreement without the prior written consent of the other party hereto, provided, however, that Buyer may assign its rights hereunder to an affiliate of Buyer upon written notice to, but without consent of, Seller, unless such assignment is reasonably likely to delay FCC Consent or the Closing Date. The terms of this Agreement shall bind and inure to the benefit of the parties' respective successors and any permitted assigns, and no assignment shall relieve any party of any obligation or liability under this Agreement.

**12.8 Notices.** All notices, requests, demands and other communications required or permitted under this Agreement shall be in writing (which shall include notice by facsimile



transmission) and shall be deemed to have been duly made and received when personally served, or when delivered by Federal Express or a similar overnight courier service, expenses prepaid, or, if sent by facsimile communications equipment, delivered by such equipment, addressed as set forth below:

If to Seller, then to:

Tom Evans, President  
Family Stations, Inc.  
290 Hegenberger Road  
Oakland, CA 94621

If to Buyer, then to:

Paul Vandenburg  
Capital Broadcasting, Inc.  
C/O TU Center  
51 South Pearl Street  
Albany, NY 12207

and to (which shall not constitute notice):

Stephen Hartzell, Esquire  
Brooks, Pierce, McLendon, Humphrey & Leonard, L.L.P.  
P.O. Box 1800 (ZIP 27602)  
150 Fayetteville Street  
Suite 1600, Wells Fargo Capitol Center  
Raleigh, NC 27601  
Email: shartzell@brookspierce.com

Any Party may change the address to which communications are to be sent by giving notice of such change of address in conformity with the provisions of this Section providing for the giving of notice.

**12.9 Further Assurances.** From time to time prior to, on and after the Closing Date, each Party hereto will execute all such instruments and take all such actions as any other party shall reasonably request, without payment of further consideration, in connection with carrying out and effectuating the intent and purpose hereof and all transactions contemplated by this Agreement, including without limitation the execution and delivery of any and all confirmatory and other instruments in addition to those to be delivered on the Closing Date, and any and all actions which may reasonably be necessary to complete the transaction contemplated hereby. The Parties shall cooperate fully with each other and with their respective counsel and accountants in connection with any steps required to be taken as part of their respective obligations under this Agreement.

**12.10 Partial Invalidity.** Wherever possible, each provision hereof shall be interpreted in such manner as to be effective and valid under applicable law, but in case any provision



contained herein, or its application to any particular circumstance shall, for any reason, be held to be invalid or unenforceable by a court of competent jurisdiction, such provision or such application shall be ineffective to the extent of such invalidity or unenforceability in such jurisdiction, without invalidating the remainder of such provision or any other provisions hereof, or its application in any other circumstance, unless such a construction would be unreasonable, and without invalidating such provision or its application in any other jurisdiction.

**12.11 Facsimile; Counterparts.** This Agreement may be executed by facsimile or email transmission and in counterparts, each of which shall constitute an original but together will constitute a single document.

[Signatures Appear on Following Page]

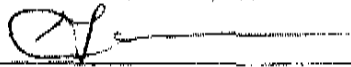


SIGNATURE PAGE TO W287AB ASSET PURCHASE AGREEMENT

IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the date first above written.

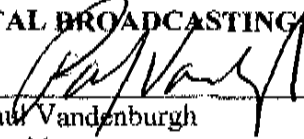
**SELLER:**

**FAMILY STATIONS, INC.**

By:   
Tom Evans  
President

**BUYER:**

**CAPITAL BROADCASTING INC.**

By:   
Paul Vandenburg  
President



**Schedule 1.1(a)**  
**FCC & Other Governmental Authorizations**

FM Translator Radio Station W287AB, 105.3 MHz, Albany, New York, FCC Facility ID No. 20922, FCC File Number BLFT-19941110TD, expires June 1, 2022.